

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Policies and Rules Pertaining )  
to Local Exchange Carrier "Freezes" )  
on Consumer Choices of Primary )  
Local Exchange or Interexchange )  
Carriers )  
\_\_\_\_\_ )

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(RM-9085)

COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.

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June 4, 1997

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## **SUMMARY**

Sprint agrees with MCI that the Commission needs to develop regulations to govern the solicitation by LECs of PIC freezes and other restrictions on the customer's ability to change their PICs. If the goals of the Telecommunications Act of 1996 are to be realized, the Commission must act to minimize the growing trend by LECs of exploiting the PIC freeze process to impede effective competition.

PIC freezes are designed to reduce the serious problem of slamming by eliminating the ability of an IXC to act as the customer's agent to have the LEC convert the customer to the IXC's service. Although the Commission has encouraged the LECs to offer the PIC freeze option to their customers in their service areas, it has not provided the LECs with any guidance as to what procedures may be employed in implementing or removing a freeze. Nor has it explicitly considered whether the LECs should even have such "gatekeeper" responsibilities as they enter the interexchange market or begin to face competition in their local exchange and "1+" intraLATA toll markets. But, it has become increasingly clear that given basic economic incentives, the LECs cannot be expected to act as neutral parties in administering the PIC freeze process and other governance functions in a fair and impartial manner so as not to disadvantage their rivals.

This point is demonstrated by the fact that, coincident with the elimination of their legal monopolies in the local and "1+" intraLATA markets, certain LECs began to aggressively exploit the PIC freeze process to their competitive advantage. For example, residential and small business customers who have been induced by Ameritech to freeze their choice of IXCs have also unknowingly frozen Ameritech as their "1+" intraLATA carrier and provider of local services. Under SNET's PIC freeze program, it is easier for SNET's own sales representatives to either

institute or remove a freeze than is the case for the sales representatives of its rivals. NYT implemented a "win-back" policy to convince customers to remain with NYT when those customers called NYT's business office to remove their PIC freezes. And GTE and SBC refuse to accept written requests from customers to remove freezes unless such requests are submitted on these LECs' own forms.

Such efforts of the LECs demonstrate that the Commission needs to constrain, in the short term, and eventually eliminate, the ability of the LECs to exploit their control of the PIC freeze process to inhibit the development of competition.

Short term measures should, at a minimum, include:

- a requirement that each LEC designate certain personnel separate from those assigned to the sales and marketing functions of the LEC to handle all requests by customers to implement or remove a freeze;
- a requirement that each LEC treat a request for such a change as ministerial and not as an opportunity to market the interLATA services of its interexchange affiliate or its offerings in the intraLATA and local markets to callers wishing to install or remove a PIC freeze;
- a requirement that the LEC maintain strict neutrality in the administration of the PIC freeze process so that it is just as easy for a competitor to initiate or remove a freeze as it is for the LEC (or LEC-affiliate) itself;
- a requirement that LECs obtain a customer's freeze on an individual market basis, *i.e.*, interLATA, intraLATA and local; and,
- a requirement that the LEC provide information regarding PIC freezes upon reasonable request to another carrier to the same extent as it provides such information to its own business office.

As a long run solution, the Commission may wish to consider assigning the responsibility for administering the PIC freeze process to a neutral third party.

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(RM-9085)

**COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.**

Sprint Communications Company L.P. ("Sprint"), pursuant to the Commission's Public Notice (DA-97-942) released May 5, 1997, hereby respectfully submits its comments on the Petition for Rulemaking filed by MCI Telecommunications Corporation ("MCI") in the above-captioned proceeding.

**I. INTRODUCTION.**

Sprint agrees with MCI that the Commission needs to develop regulations to govern the solicitation by local exchange carriers ("LECs") of primary interexchange carrier ("PIC") freezes and other restrictions on ability of subscribers to change their PICs. As MCI has explained, certain LECs are actively "employ[ing] PIC freezes as a strategic tool to lock in their own customers and to impede effective competition, particularly in the local and intraLATA toll markets they currently dominate." Petition at 1-2. If the competitive goals of the Telecommunications Act of 1996 are to be realized, the Commission must act to minimize such LEC abuse of the PIC freeze process.

The problems identified by MCI are a warning signal that the free exercise of customer choice in selecting a carrier to handle the customer's traffic is seriously threatened by the fact that the LECs remain in control of the PIC freeze process and have not been given any guidance by the Commission in the administration of procedures for implementing or removing such freezes. The Commission entrusted the LECs with control over PIC freezes in an era when entry into the interexchange market by the major LECs -- the Regional Bell Operating Companies ("RBOCs") and the GTE Operating Companies ("GTE") -- was severely restricted by antitrust consent decrees. These consent decrees have been superseded by the Telecommunications Act of 1996 (Section 601(a)), and the RBOCs and GTE are now direct competitors of the interexchange carriers ("IXCs"). Moreover, the LECs are beginning to face competition from other carriers in the "1+" intraLATA market and may eventually encounter significant competition in their local markets. Because the LECs can no longer be considered impartial gatekeepers in the interLATA market -- and because the risks inherent in such a lack of impartiality increase as competition itself increases -- their continued absolute control of the PIC freeze process is untenable.

For this reason, Sprint suggests that the Commission broaden the scope of MCI's requested rulemaking in order to address all of the issues presented by the LECs' current status as PIC freeze "gatekeepers." The Commission needs to constrain, in the short term, and eventually eliminate, the ability of the LECs to exploit their control of the PIC freeze process to inhibit the development of competition.

Short term measures should, at a minimum, include: (1) a requirement that each LEC designate certain personnel separate from those assigned to the sales and marketing functions of

the LEC to handle all requests by customers to implement or remove a freeze;<sup>1</sup> (2) a requirement that each LEC treat a request for such a change as ministerial and not as an opportunity to market the interLATA services of its interexchange affiliate or its offerings in the intraLATA and local markets to callers wishing to install or remove a PIC freeze; (3) a requirement that the LEC maintain strict neutrality in the administration of the PIC freeze process so that it is just as easy for a competitor to initiate or remove a freeze as it is for the LEC (or LEC-affiliate) itself; (4) a requirement that LECs obtain a customer's freeze on an individual market basis, *i.e.*, interLATA, intraLATA and local; and, (5) a requirement that the LEC provide information regarding PIC freezes upon reasonable request to another carrier to the same extent as it provides such information to its own business office.

As a long run solution, the Commission may wish to consider assigning the responsibility for administering the PIC freeze process to a neutral third party. By doing so, the Commission would relieve, at least in part, the LECs of their gatekeeper responsibilities. And, such relief may help enable competition in the "1+" intraLATA and local markets, as well as preserve competition in the interLATA market.

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<sup>1</sup>Sprint does not suggest that the duties of such personnel be limited solely to handling the implementation or removal of PIC freezes. Plainly, they could be assigned to other functions normally performed in a LEC's business office as long as such functions do not directly involve the sales and marketing of the services provided by the LECs or their affiliates. Strict separation of the PIC freeze function from the sales and marketing functions, however, is absolutely necessary to ensure that the LEC's sales and marketing personnel are not able to implement or remove a PIC freeze at the time of sale.

## **II. CERTAIN LECs ARE ABUSING THEIR CONTROL OF THE PIC FREEZE PROCESS TO LIMIT COMPETITIVE INROADS INTO THEIR FORMERLY PROTECTED MARKETS.**

There is no question that slamming is a serious problem.<sup>2</sup> Slamming robs customers of the time they must devote to ensuring that they are returned to their chosen carriers; it may cost customers money; and, in all cases, it is the source of great aggravation. Ultimately, slamming deprives customers of the main benefit of competition: the right to be served by carriers of their own choosing. The Commission has received thousands of slamming complaints, *LOA Order* at 9560, ¶1, and these complaints, in turn, have led the Commission to adopt a number of rules designed to curtail such practice. See, e.g., *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992) (*PIC Verification Order*), *recon. denied*, 8 FCC Rcd 3215 (1993) (*PIC Verification Reconsideration Order*) (requiring that IXC's utilize one of four methods to verify PIC change orders generated by outbound telemarketing before submitting such change orders to the LECs); *LOA Order* at 9560-9561, ¶1 (prescribing the "general form and content" of Letters of Agency ("LOAs") and adopting other policies to "prohibit certain deceptive or confusing marketing practices" by IXC's).

Understandably, the Commission has "encourage[d] entities such as LECs to take additional steps that might help to reduce slamming in their service areas." *LOA Order* at 9574, fn. 58. In particular, it has allowed the LECs to implement "PIC freeze" options, which are

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<sup>2</sup>Slamming is "the unauthorized conversion of a customer's interexchange carrier by another interexchange carrier, an interexchange resale carrier, or a subcontracted telemarketer." *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 10 FCC Rcd 9560, fn. 1 (1995) (*LOA Order*).

intended to reduce a customer's chances of being slammed. As generally administered, a PIC freeze eliminates the ability of an IXC to act as the customer's agent to have the LEC convert the customer to the IXC's service. Instead, the customer must contact the LEC directly to remove the freeze and authorize the LEC to change his IXC.

However, the Commission has not, thus far, provided the LECs with any guidance as to what procedures may be employed in implementing or removing a freeze. Nor has it explicitly considered whether the LECs should be charged with the responsibility for devising such additional measures once they entered the interexchange market or began to face competition in their local exchange and "1+" intraLATA toll markets. It is now becoming increasingly clear that any measures implemented by the LECs that might reduce the serious problem of slamming must be carefully monitored. As shown below, abuse of the PIC freeze process in an effort to control slamming may -- as effectively as slamming itself -- deprive customers of the right to be served by the carriers of their choice.

In the past, most LECs did not actively promote PIC freezes and usually offered to "freeze" a customer's PIC only after the customer had been slammed.<sup>3</sup> This measured approach appears to be changing. As MCI has explained, two LECs -- Ameritech and Southern New England Telephone Company ("SNET") -- began to aggressively promote PIC freezes around the same time that their legal monopolies in the local and "1+" intraLATA markets were being eliminated.

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<sup>3</sup>See *LOA Order* at 9574, fn. 58 (describing the fact that Pacific Bell offered the option of a PIC freeze to slammed customers after service had been restored to their chosen carriers).

For example, in late 1995, on the eve of the implementation of "1+" intraLATA dialing parity in certain of its states, Ameritech began a campaign to induce its residential and small business customers throughout its region to implement PIC freezes. It mailed brochures to such customers in which it warned of unauthorized changes to "long distance service"; referred to FCC activities against slamming; and encouraged the subscribers to institute a PIC freeze before they were "slammed." What Ameritech did not explain in its brochure was that customers who were thereby induced to freeze their choice of IXCs would also freeze Ameritech -- the incumbent monopolist -- as their "1+" intraLATA carrier as well as their provider of local services. Thus, customers who responded to Ameritech's brochure but who subsequently wished to take the services of one of the carriers entering Ameritech's "1+" intraLATA market have had to contact Ameritech directly to "unfreeze" their assignment to Ameritech.<sup>4</sup> Some of these customers undoubtedly are unwilling to expend the extra effort to call Ameritech and have the freeze removed. As for those customers who do call Ameritech's business offices, Ameritech is in the position to try to convince such customers to remain with Ameritech for their "1+" intraLATA calling.

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<sup>4</sup>Since the start of Ameritech's campaign to induce its customers to freeze their accounts, the percentage of PIC changes submitted by Sprint to Ameritech but subsequently rejected because of a "frozen" account has increased from 6.15 percent in January, 1996 to 24.10 percent in April, 1997. The percentages of PIC changes submitted by Sprint but rejected by other LECs because of PIC freezes are increasing as well. Nynex's rejection rate has increased from 7.02 percent in February 1996 to 20.59 percent in April 1997. Over the same period, Bell Atlantic's rejection rate has increased from 3.95 percent to 9 percent; BellSouth's rejection rate has increased from 4.26 percent to 10.94 percent; and Southwestern Bell rejection rate has increased from 4.69 percent to 7.20 percent. GTE's rejection rate of Sprint-provided PIC changes has increased over 36 percent during the February 1996-April 1997 period (from 3.04 percent to 4.15 percent).

Because the Ameritech brochure misled customers and was blatantly anticompetitive, Sprint filed complaints against Ameritech before the regulatory commissions in each of Ameritech's five states. Both the Illinois Commerce Commission and the Michigan Public Service Commission agreed with Sprint and found Ameritech's brochure to be deceptive, misleading and a barrier to intraLATA competition.<sup>5</sup> Unfortunately, the findings of each of these commissions are limited to Ameritech's actions in their respective states. Ameritech is thus free to continue its anticompetitive exploitation of the PIC freeze process in its other states as well as in the interLATA market.

Only this Commission has the ability to ensure that Ameritech and other LECs not engage in such anticompetitive tactics in all markets, *e.g.*, interLATA, intraLATA and local. And, clearly the Commission has the statutory authority to do so. The Telecommunication Act of 1996 extends the Commission's authority to promulgate rules governing the carrier selection process in the interexchange market to the local and intrastate toll markets as well. Specifically, Section 258(a) of the 1996 Act provides that "... a change in a subscriber's selection of a provider of

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<sup>5</sup>See *Sprint v. Illinois Bell Telephone Company*, No. 96-0084 (consolidated with *MCI et al. v. Illinois Bell Telephone Company*, No. 96-0075), Order issued April 3, 1996, *slip op.* at 10 (finding that Illinois Bell's brochure is not only "misleading" because it "fails to clearly inform customers that PIC protection will apply to all of their telecommunications services" but it is also "discriminatory and anti-competitive" because "it establishes unfair and unreasonable barriers to IXC intraMSA competition"); *Sprint v. Ameritech Michigan*, Case No. U-11038, *Opinion and Order* adopted August 1, 1996, *slip op.* at 5-8 (explaining that Ameritech Michigan's brochure is deceptive and misleading) and at 11-13 (finding that Michigan Ameritech's brochure is anticompetitive because it erected hurdles to the ability of customers to switch to alternative carriers in the intraLATA toll market just as such alternative carriers were entering the market). In Ohio, the Attorney Examiner's Report in *Sprint v. Ameritech Ohio*, Case No. 96-142-TP-CSS concluded that Ameritech Ohio's PIC freeze campaign was misleading and that Ameritech deliberately chose to apply the PIC freeze to the customer's entire account in order "to retain market share in the intraLATA and local service markets." *Slip op.* at 17.

telephone exchange service or telephone toll service" must be accomplished "in accordance with such verification procedures as the Commission shall prescribe." State commissions are then to enforce "such procedures with respect to intrastate services."

It is imperative that the Commission exercise the authority it has been granted in this regard as rapidly as possible since other LECs have begun to utilize the PIC freeze process to limit competitive entry into their regions. For example, SNET's campaign to induce its customers to freeze their accounts shares many of the faults as the Ameritech plan found to be unlawful in Illinois and Michigan. As MCI explains in detail (Petition at 5-8), SNET targets PIC freeze protection only to its customers and it refuses to accept requests from IXC's to switch customers with a frozen account to the IXC's services even though the IXC's have obtained the express consent of such customers to make the change in accordance with Commission-approved procedures. To make matters worse, SNET provides its own sales representatives with information regarding whether a customer's account is frozen, thereby enabling such representatives to remove the freeze at the time of the call. But, it refuses to give such information to competing carriers. These carriers learn of freezes only when SNET rejects their requests to switch customers. This may occur weeks after such customers have chosen to switch to competing carriers and requires such carriers to call their potential customers; determine whether such customers are still willing to switch to their services;<sup>6</sup> and, if so, establish a three-way call with SNET to have the customers instruct SNET to remove the freeze.

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<sup>6</sup>Customers may believe that any delay in switching service is caused by the IXC's and thus may be reluctant to subscribe to the services of such IXC's.

Other carriers have also devised schemes to exploit their control of the PIC freeze process to limit competitive inroads into the "1+" intraLATA markets in their territories. Nynex's operating company New York Telephone ("NYT") implemented a "win-back" policy to convince customers to remain with NYT when those customers called NYT's business office to remove their PIC freezes in order to subscribe to the services of other carriers. The New York Public Service Commission ordered NYT to cease such marketing attempts. *See Order Concerning Implementation of IntraLATA Presubscription by New York Telephone Company* issued August 15, 1996. GTE refused to accept as valid a form which Sprint had provided each of its new customers in GTE's territories who had frozen their PIC, which instructed GTE to remove the freeze and switch such customer to Sprint, despite the fact that the customer had signed the form and mailed it GTE.<sup>7</sup> Similarly, Southwestern Bell refuses to accept written authorizations from customers to unfreeze their accounts unless such authorizations are on Southwestern Bell's own forms.

Plainly, the various schemes being employed by these LECs demonstrate that as the competition contemplated by the Telecommunications Act of 1996 develops, the RBOCs and other LECs cannot be entrusted with the unfettered administration PIC freeze procedures. Sprint does not here attribute any evil motives to any or all LECs. Rather, Sprint's point is that given basic economic incentives, a competitor cannot act as neutral party and it cannot be expected to administer governance functions in a fair and impartial manner so as not to disadvantage its rivals. Thus, if the goal of competitive local and intraLATA markets is to be realized and if the

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<sup>7</sup>Sprint had provided these forms on a trial basis. Because of GTE's refusal to honor such forms, Sprint was forced to abandon the trial.

interLATA market is to remain robustly competitive, the Commission will need to assign the responsibility for the PIC freeze process to a neutral third party. In the meantime, and as long as the LECs control such process, the Commission must implement rules to prevent the LECs from abusing their control to harm competition.

**III. PENDING THE POSSIBLE ASSIGNMENT OF RESPONSIBILITY FOR ADMINISTERING THE PIC FREEZE PROCESS TO A NEUTRAL THIRD PARTY, THE COMMISSION MUST IMPLEMENT REGULATIONS DESIGNED TO MINIMIZE OPPORTUNITIES FOR LEC MISCONDUCT IN THEIR ADMINISTRATION OF SUCH PROCESS.**

The efforts described above by Ameritech, Nynex and others to exploit their control of the PIC freeze process are clearly inimical to competition. But, as long as the RBOCs and other LECs are the gatekeepers, their personnel will have the discretion to administer the process so as to enhance the competitive position of the LECs and their IXC affiliates to the detriment of non-affiliated carriers. Thus, the Commission must seek to minimize the exercise of such discretion by making the process for implementing and removing PIC freezes as automated or neutral as possible.

Sprint believes that there are a number of actions that the Commission should take in this regard. Subscribers should be able to switch their choices of carriers with minimum effort and without undue delay. LEC personnel receiving a customer's request to freeze or unfreeze the customer's PIC should only be allowed to perform the ministerial task of processing the request. They should not be allowed the "individual discretion" to view the caller's decision to remove a freeze in order to switch carriers as an opportunity to market the services of the LEC or its affiliates to the caller.

Moreover, as MCI has suggested, the process for implementing or removing carrier freezes must be the same for all carriers, including the LECs (and LEC-affiliates). For example, it

is Sprint's understanding that current LEC procedures prohibit IXC's (other than the LEC's affiliate) from acting as their customers' agents in either implementing or removing a freeze on their customers' accounts with the LECs. Instead, customers have to take such action themselves. They must instruct the LEC to either freeze or unfreeze their accounts. If an IXC requests that the LEC switch an individual with a frozen account to the IXC, such request will be rejected. The IXC must then have the customer either write to LEC to authorize the assignment or, if such option is offered by the LEC, have the customer participate in a three-way phone call with the LEC and IXC to instruct the LEC to unfreeze the account and switch the customer to the IXC.

The LEC should not be permitted the "individual discretion" to vary this process depending upon the identity of the customer's service provider. The LEC should not be allowed to make it relatively simple for customers to freeze their accounts when the LEC is providing the service by, for example, accepting such freeze authorizations by telephone, but require extra steps by customers, *e.g.*, the submission of a written request for a freeze, when the service is provided by a LEC competitor. And, the LEC business office personnel should not be allowed to act as the customer's agent to remove the freeze since, as noted, IXC's cannot act as agents for their customers to remove a freeze but instead must have the customer either submit a written request or participate in a three-way phone conversation with the LEC.

Moreover, the Commission should require that the LECs obtain a customer's freeze request on an individual market basis. Thus, customers would have to separately instruct the LECs to freeze their choices of carriers in interLATA, intraLATA and local markets. This requirement should help prevent campaigns such as the one conducted by Ameritech in which the LEC surreptitiously obtains "instructions" from subscribers to freeze their entire account --

including freezing the incumbent monopoly LEC as their local and "1+" intraLATA carrier -- by obtaining instructions of subscribers to freeze their choices of interLATA carriers.

Sprint recognizes that the goal of minimizing the exercise of "individual discretion" by LEC personnel in the PIC freeze process may be difficult to achieve. Presumably, LEC business office personnel are (or will be) trained to try to sell their LEC's products and services to all callers regardless of the purpose of such calls. Sprint's experience with Nynex suggests as much. Nonetheless, Sprint believes that progress toward such goal can be made if the LECs are required to establish a separate staff to administer the PIC freeze process. All callers to the LEC business office seeking to institute or remove a carrier freeze would be required to call this separate staff. Such staff would not be allowed to market the LEC's products and services. Nor would it be allowed to encourage the callers to freeze or unfreeze their accounts other than simply informing the customer of such options. Basically, these personnel would only perform the ministerial tasks of receiving the caller's request to institute or remove a PIC freeze, providing the caller with information on what further action may be necessary to honor the request, and, starting the process for implementing the caller's instructions. Although such separate staff will not eliminate the ability of LECs to abuse their control of the PIC freeze process to harm competition, the visibility resulting from such separation will, at least in the short run, enhance the ability of the Commission and LEC competitors to monitor LEC control of the PIC freeze process and perhaps provide an opportunity to detect abuses.<sup>8</sup>

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<sup>8</sup>An essential part of any Commission regulatory plan to minimize the opportunity for misconduct by the LECs in their administration of the PIC freeze process requires that any information disseminated by such LECs about the process, including information about slamming and the subscribers' ability to either institute or remove carrier freezes, must be accurate. Of course, carriers are obligated under the Communications Act to provide accurate information to their

Sprint does not believe that any of its suggestions here will impose any undue costs or burdens on the LECs. Nevertheless, Sprint recognizes that there may be instances, especially those involving the smaller LECs, where the costs may outweigh the benefits. Sprint, of course, would not oppose the grant of a waiver where the petitioning LEC is able to make such demonstration.

**IV. IN THE LONG RUN, THE COMMISSION MAY WISH TO CONSIDER TRANSFERRING CONTROL OF THE PIC FREEZE PROCESS TO A NEUTRAL THIRD PARTY.**

The regulatory requirements described above (with the exception of requirements for the full and accurate disclosure of information to subscribers) should be considered a temporary, albeit necessary, solution to the difficulties caused the LECs' current control of the PIC freeze process. The Commission, of course, will need to ensure that such process is administered over the long term in a competitively neutral fashion. Eventually, therefore, the Commission may have to relieve the LECs of their gatekeeper functions in this regard and turn over the responsibility for handling subscribers' requests to implement or remove a PIC freeze to a neutral third party. Sprint believes that this and perhaps other long term solutions should be examined as part of the rulemaking requested by MCI.

**V. CONCLUSION.**

The Telecommunications Act of 1996 envisions a market where LECs, IXCs and others vigorously compete against one another for customers. Under such circumstances, the LECs can no longer be considered to be impartial, and their continued control of the PIC freeze process can

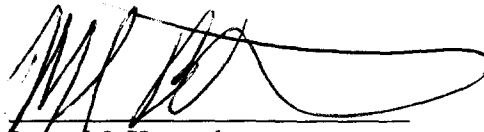
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customers or prospective customers. Nonetheless, if the Commission believes it to be helpful, it should, as MCI has proposed, establish a rule proscribing the use of false and deceptive statements to secure PIC freezes.

no longer be justified. For this reason, it is imperative that the Commission adopt behavioral rules to govern the LEC administration of PIC freeze procedures in the short term and perhaps develop a structural solution over the longer term. Sprint respectfully requests that a rulemaking proceeding as proposed by MCI and as further elaborated upon here be instituted to accomplish these objectives.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY L.P.

A handwritten signature in black ink, appearing to read 'Leon M. Kestenbaum', written over a horizontal line.

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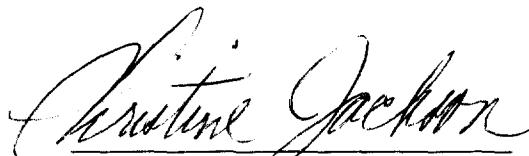
### **Certificate of Service**

I hereby certify that a copy of the foregoing Comments of Sprint Communications Company L.P. was sent by hand or by United States first-class mail, postage prepaid, on this the 4<sup>th</sup> day of June, 1997 to the below-listed parties:

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